

1 SENATE BILL NO. 317

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO RECOVERY OF COSTS IN AN
5 ACTION FOR WHICH AN INSURER HAS BEEN FOUND NOT TO OWE A DUTY TO DEFEND THE
6 INSURED; PROHIBITING AN INSURER FROM RECOVERING CERTAIN COSTS; PROVIDING AN
7 EXCEPTION ALLOWING AN INSURER TO RECOVER CERTAIN COSTS; AND REQUIRING INSURERS TO
8 NOTIFY THE INSURANCE COMMISSIONER IF POLICIES SEEK CERTAIN COSTS."
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10 WHEREAS, in *Travelers Casualty and Surety Company v. Ribi Immunochem Research*, 2005 MT 50,
11 326 Mont. 174, 108 P.3d 469, the Montana Supreme Court held that an insurer may recover defense costs
12 when the insurer did not have a duty to defend any of the asserted claims; and

13 WHEREAS, in subsequent cases, including *Horace Mann Insurance Co. v. Hanke*, 2013 MT 320, 372
14 Mont. 350, 312 P.3d 429, the Montana Supreme Court affirmed its decision to allow an insurer to recover
15 defense costs when the insurer was determined to have no duty to defend an insured.

16 THEREFORE, this act generally prohibits insurers from recovering costs in an action for which the
17 insurer has been found to not owe a duty to defend, but also provides an exception for actions in which certain
18 conditions are met.

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20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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22 **NEW SECTION. Section 1. Insurer costs prohibited -- duty to defend -- exception.** (1) Except as
23 provided in subsection (2), an insurer may not recover costs of defending an insured against asserted claims if
24 the insurer is subsequently determined not to owe a duty to defend the insured.

25 (2) An insurer may recover costs of defending an insured against asserted claims when the insurer is
26 subsequently determined not to owe a duty to defend if:

27 (a) the insurance policy contains clear language specifically allowing the insurer to recover those
28 costs;

- 1 (b) the insurer did not consider those costs when determining the amount of the premium; and
- 2 (c) the insurer provides notice to the insured at the time of issuance or renewal of the policy that the
- 3 insurer may recover those costs.

4 (3) An insurer seeking to recover costs pursuant to subsection (2) shall notify the insurance
5 commissioner in writing that the insurer has satisfied the requirements of subsection (2).

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7 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
8 integral part of Title 25, chapter 10, part 1, and the provisions of Title 25, chapter 10, part 1, apply to [section 1].

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